

1621044 (Migration) [2019] AATA 2170 (18 April 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1621044

MEMBER: Margie Bourke

DATE: 18 April 2019

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa.

Statement made on 18 April 2019 at 1:47pm

1. **CATCHWORDS**

2. *MIGRATION – Partner (Provisional) (Class UF) – Subclass 309 (Spouse (Provisional)) – not satisfied parties had provided sufficient evidence – previous onshore partner visa application – withdrew application – first wife left marital home – allegation of bias – inconsistency of the information contained in the evidence – not reliable or credible – decision under review affirmed*

3.

4. **LEGISLATION**

Administrative Appeals Tribunal Act 1975 ss 37, 24Z

Migration Act 1958 (Cth), ss 5F, 65, 349(1), 359A, 359AA, 362A

Migration Regulations 1994 (Cth), Schedule 2 cls 309.211, 309.221, r 1.15A(3)

CASES

He v MIBP [2017] FCAFC 206

SZPZH v MIAC [2011] FMCA 407

SZPZH v MIAC [2011] FCA 960

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

5. This is an application for review of a decision made by a delegate of the Minister for Immigration on 15 November 2016 to refuse to grant the visa applicant a Partner (Provisional) (Class UF) visa under s.65 of the *Migration Act 1958* (the Act).

6. The visa applicant applied for the visa on 4 April 2016 on the basis of his relationship with his sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant.
7. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211 and cl.309.221 because the delegate was not satisfied that the parties had provided sufficient evidence and had not provided consistent evidence to be satisfied that they were in a genuine spousal relationship.
8. The review applicant appeared before the Tribunal on 11 February 2019 to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant [Mr A], and [Pastor B].
9. The review applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.
10. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

11. The issue in the present case is whether the parties are in a genuine spousal relationship within the meaning of s.5F(2) of the Act.

SPOUSE/DE FACTO (cl.309.211(2), cl.309.221)

Whether the parties are in a spouse or de facto relationship

12. Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen.
13. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP*[2017] FCAFC 206.
14. **Evidence of [Mr A's] previous visa application, and the relevance to this review**
15. The review applicant [Ms C], and the visa applicant [Mr A], both gave consistent evidence of the following facts about the commencement of the relationship. [Mr A] was married in 2012

to his first wife, and [Mr A] had applied for an onshore partner visa sponsored by his first wife. ([Mr A] was sponsored for an onshore partner visa by his first wife, and was later sponsored for an offshore partner visa by [Ms C], which is the subject of this review. I will refer to the first visa application as the onshore partner visa application.) [Mr A] and his first wife separated in early 2014 when the first wife moved out of their marital home. [Mr A] and [Ms C] met at church in June 2014. The relationship between [Ms C] and [Mr A] became a 'girlfriend/boyfriend' relationship [in] August 2014.

16. [Mr A's] application for the onshore partner visa was refused by the Department in a decision record dated February 2015, and [Mr A] applied to the Administrative Appeals Tribunal for a review of this decision in March 2015. This information about the refusal and the application for review was also recorded in the Department's decision record dated 15 November 2016, in relation to the matter that is the subject of this review, and the review applicant provided the tribunal with a copy of this decision record. [Mr A] gave evidence that he applied for review because he did not know why the application for the visa was refused, and also as they were not divorced the relationship had not ceased. [Ms C] gave evidence that the applicant applied for the review to remain in Australia as they needed more time together. The tribunal has noted that the representative for the visa applicant in applying for the review in of the onshore partner visa application in March 2015 is the same representative who acts for the review applicant in the review before this tribunal. The tribunal is satisfied that the information in relation to the application for review of the previous onshore partner visa by the visa applicant is known to the visa applicant and the review applicant.
17. [Mr A] and [Ms C] claim they moved in together at [Ms C's] unit in July 2015, although it was against both their religious beliefs to have sexual relations prior to marriage. [Mr A] and [Ms C] both state they did not have a sexual relationship although they lived together.
18. The tribunal requested the Department provide the Department file in relation to the onshore partner visa application made by [Mr A]. There was relevant information on this file that was put to [Mr A], and put to [Ms C] pursuant to s.359AA in the hearing. That information is that the Department invited [Mr A] through his representative to provide information in support of his onshore partner visa by letter dated 20 June 2014. There are two letters from [Mr A's] representative after that date. One is dated 29 July 2014 which confirms the representative acts for [Mr A] and encloses a police clearance certificate. The certificate is dated [July] 2014, but there is no record of when the certificate was requested, so the tribunal puts no weight on this as a document obtained or provided by [Mr A] at a particular time. The second letter is dated 6 October 2014, enclosing further documents in support of [Mr A's] "*application for [his] spouse visa*", and is folio'd behind two documents on the Department file. The first document is a one page joint bank statement in the names of [Mr A] and his first wife dated [August] 2014 to [September] 2014. The second is a letter from an energy provider dated [September] 2014, addressed to [Mr A's] first wife c/- his first wife and [Mr A]. Based on the dates of these documents, I am satisfied that they could not have been provided by the representative to the Department unless the documents were provided to the representative in September or early October 2014. There are also photographs on the Department file but as they are not dated, the tribunal has not taken them into account, as it cannot be satisfied they were provided in support of the visa application at a particular time.
19. [Mr A] and [Ms C] were married in February 2016. [Mr A] withdrew the application for review in relation to the onshore partner visa application in relation to his first wife on 16 March 2016. [Mr A] departed Australia at the end of March 2016, and resides in [Country 1]. The offshore application for the visa which is the subject of this review was made on 4 April 2016.
20. In the Department's decision record dated 15 November 2016, the delegate identified the concerns that [Mr A] was appealing the Department decision in relation to his previous onshore partner visa application and claiming that relationship was genuine, during the same

periods as he now claims to be in a relationship with [Ms C]. The delegate also noted the parties gave inconsistent evidence about the relevant dates in their relationship, but this was not a factor in the oral evidence before the tribunal.

21. It is relevant to this review that [Mr A] appears to have been conducting an ongoing application for an onshore partner visa and providing documents in support of that visa application at a time he states the onshore relationship has ceased. ([Mr A] stated that his first wife had returned to live with her previous partner with whom she had [number] children. I have considered [Mr A's] claims they had separated but not divorced, and therefore the relationship had not ceased. I have considered [Mr A's] evidence that his first wife had left their marital home, and returned to live with her previous husband, who had been released from [Facility 1]. I have considered that, based on the evidence of [Mr A], the relationship between [Mr A] and his first wife had ceased in February 2014). It is relevant to this review that [Mr A] had lodged an application for review of a Department decision in relation to a partner relationship that had ceased, and did not withdraw the application for review until 12 months later. I have noted [Mr A] stated he had applied for the review of the onshore partner visa because he claims that the relationship had not ceased, as they were separated, and not divorced. I find this statement is implausible; based on [Mr A's] evidence in this review, the relationship with his first wife had broken down in February 2014 when she left the marital home, irrespective of whether either party had applied for divorce. It is relevant to my considerations of the reliability of [Mr A's] evidence that he provided the documents to his representative in approximately September 2014 in support of his application for the onshore partner visa with his first wife, and he claims he did this because he did not know why the application was refused. It is relevant my assessment of the credibility and reliability of the evidence before me, whether I am satisfied that [Mr A's] relationship with his first wife had broken down at the time the information was provided to the Department in October 2014, and at the time [Mr A] lodged the application for review in relation to his first Visa application in March 2015. It is relevant to my assessment of the credibility and reliability of the evidence before me, particularly in relation to my analysis of the evidence as to the genuineness of the relationship, that [Mr A] and [Ms C] claim to have been in an ongoing relationship while they both were aware of the review in relation to a partner visa application involving a previous partner had been lodged and was current. It is also relevant to my assessment of the reliability and credibility of the evidence before me, particularly in relation to the genuineness of the relationship, that both [Ms C] and [Mr A] claim their relationship started to develop from August 2014, and subsequent to this date, [Mr A] was providing documents in support of his previous onshore visa application.
22. I have considered this evidence. I invited [Ms C] to comment or respond to the information that [Mr A] had provided documents to the Department in support of his previous visa application, after their relationship had commenced, pursuant to s.359AA. A time of three weeks in which to provide her comments or response was granted.
23. Two other particulars of information arising out of the oral evidence at the hearing were also put to [Ms C]. [Ms C] stated she understood all the particulars of the information put to her. She stated she understood the relevance of all the information, and the consequence for the review if it was relied upon. The time to respond in writing was granted by the tribunal, and the period of three weeks was allowed in relation to all three matters. Three requests for information were made (one at the hearing and two in writing afterwards) and the review applicant provided responses to all requests and invitations by 4 March 2019. A further invitation to respond or comment to adverse information was provided to [Ms C] after the hearing.
24. The review applicant sought an extension of time in which to provide the responses based on the fact the review applicant had requested a copy of the hearing audio within days of the hearing, and submitted the responses to the s.359AA information could not be provided

without access to the audio recording. The request was considered but declined because a time of three weeks in which to respond to the s.359AA information had been granted which the tribunal considered was reasonable in the circumstances. The review applicant and the representative had stated at the hearing that they understood the three matters put pursuant to s.359AA, and the accuracy of the responses to the information which had been clearly identified should not, in the tribunal's opinion, be dependent upon the audio recording. Another reason the request for an extension of time was declined in the circumstances was that although the tribunal noted it was under no obligation to provide a copy of the hearing audio, a copy of the audio recording was provided to the representative a week prior to the responses being due.

25. In the hearing [Mr A] stated he could not remember providing the documents. He then stated he had a representative and provided the documents. The interpretation of this answer has been questioned. I have carefully listened to the audio at the hearing. I accept that [Mr A's] initial answer in the hearing was that he could not remember providing the documents. The tribunal then asked whether he could remember providing the documents to his representative in September or October 2014 in support of his first visa application, which indicated that the relationship with his first wife was ongoing at that time. [Mr A's] answer was interpreted that he was a little bit embarrassed, but there was a lot of information. [Ms C] stated she was concerned her husband had not been understood the question, and the tribunal asked [Mr A] firstly whether he understood the question. The interpreter stated [Mr A] indicated that he did understand the question. The question was repeated, and the answer was again interpreted and the interpreter confirmed that [Mr A] had stated he was embarrassed.
26. In her post hearing submissions [Ms C] states that [Mr A] had stated he was confused by the question not that he was embarrassed by providing the documents. I decided not to rely on [Mr A's] answer that he was embarrassed by providing the documents. However because [Ms C] was concerned about the quality of the interpreting of that one answer, the tribunal asked the interpreter to ask the question again. The interpreter again asked [Mr A] about the provision of the documents provided by [Mr A's] representative to the Department, dated in September 2014 in support of the application for his partner visa with his first wife. [Mr A] stated he remembered and he provided those documents.
27. [Mr A] explained that at the time he provided the documents he did not know why the application had been refused by the Department. I clarified through the interpreter to [Mr A] that I needed him to carefully listen to the question and ensure that he understood it. I explained that the documents I was asking him about were provided prior to the Department refusing the application. In October 2014 the Department did not know the information that [Mr A] was telling the tribunal now, specifically that his relationship with his first wife had broken down in February 2014, and that [Mr A] had commenced a relationship with [Ms C] in August 2014. [Mr A] stated that his relationship with his first wife had not ended at that time. He stated they had only separated as his first wife had gone to look after her first husband who had been released from [Facility 1] and this had made him feel sad.
28. I am satisfied that the oral evidence at the hearing from [Mr A], was given in circumstances where he understood the question and gave appropriate answers that were relevant to the questions, and explained the issues that with the content of the questions.
29. In the post hearing responses, [Mr A] states he would have been too busy and his English was poor, so the representative would have elected to communicate with his first wife. I have considered that in onshore partner visa applications, the visa applicant is present in Australia, and would generally be instructing the representative. In this case I have considered the evidence of [Mr A] that his first wife left their marital home in February 2014 and resumed a relationship with her previous husband. I find it unlikely that [Mr A's] first wife

would have been providing current documents to [Mr A's] representative in support of [Mr A's] application, at a time when she had left the relationship over six months previously. The parties advised the tribunal in the post hearing submissions that the representative had discarded all records of the case after the visa refusal in February 2015, which does not seem credible as [Mr A] applied for review to the AAT in March 2015. The tribunal made enquiries of the visa applicant's previous representative as to whether he had discarded the file after the Department refusal in February 2015. The tribunal had confirmed with the previous representative that it did not want to obtain a copy of the file but was just interested whether the tribunal had been provided with the correct information about the firm's record Management the file from the parties in the current review. The advice received from the visa applicant's previous representative was that they had not discarded their files and the relevant file was able to be obtained from archives.

30. The tribunal put the information to the review applicant, [Ms C] in a letter dated 12 March 2019 pursuant to the s.359A processes. [Ms C] provided a response dated 19 March 2019 with attachments. I am satisfied that there were two telephone calls made by a relative and his wife to the applicant's previous representatives on 13 February 2019 and 22 February 2019. Based on a copy of an email sent from the relative to the previous representatives I am satisfied that the relative was advised the file had been closed for more than four years and the folder had been destroyed. I accept the information provided by the review applicant to the tribunal that she had arranged contact to be made with the visa applicant's previous representative, and there was advice given that the file had been closed and the folder destroyed. The response provided to the tribunal was that the representative had advised that since the department issued the refusal decision record on 23 February 2015 he had closed the case and discarded all records and documents, and the information provided to the representative in October 2014 could not be 'validated'.
31. In the post hearing submissions, the review applicant suggests that the visa applicant's first wife could have submitted the documents to the representative, and that she had control over their financial affairs in September and October 2014. I have considered this submission, although it is not consistent with the oral evidence of the visa applicant.
32. I am satisfied based on the fact the letter was sent by the previous representative to the Department, that information was provided to the representative in September or October 2014, which included current documents dated September 2014. I accept that the visa applicant in the matter which is the subject of this review was also the visa applicant in that matter. It is open to the tribunal to infer that those current documents were provided by the visa applicant to his representative, who then submitted them to the Department on behalf of [Mr A] in October 2014.
33. The tribunal has considered the facts. [Mr A] states that his first wife has returned to live with her previous partner in February 2014. The Department subsequently requests information from [Mr A's] representative in support of [Mr A's] onshore partner visa application. [Mr A's] representative is provided with current documents and provides them to the Department in October 2014. The documents support [Mr A's] onshore visa application as they are evidence that in October 2014 [Mr A] was in an ongoing spouse relationship between [Mr A] with his first wife. The inference is that they were provided by the visa applicant in support of his application for the visa.
34. **The issue of the documents from the visa applicant's previous partner application**
35. In the responses received on 4 March 2019 the review applicant and visa applicant submitted the tribunal should not have considered materials from the past closed visa spouse case, that it was outside the scope of the current hearing which was the subject of

this review, and that the tribunal was required to provide the documents to the review applicant before the hearing. I have considered that in the Department's decision record dated 15 November 2016, the delegate recorded that the visa applicant and review applicant (the sponsor) claimed to have developed a relationship [in] August 2014 and moved in to live together [in] July 2015. The delegate also recorded that the visa applicant's partner visa application with his former spouse was refused on 23 February 2015, and on 16 March 2015 the review applicant and his former spouse lodged an application for review with the AAT. The application for review was withdrawn on 17 March 2016.

36. In my opinion, the fact the delegate had recorded the previous spouse visa and noted the visa applicant had applied for a review of the refusal decision, whilst claiming to be in a relationship with a new sponsor [Ms C] in relation to the matter which is the subject of this review, is relevant to the current review. The tribunal has power under s.349(1) which confers all the powers and discretions of the primary decision maker to obtain information. It is well established that the Migration and Review Division of the AAT follows an inquisitorial process of review to investigate and obtain relevant information.
37. The parties in their post hearing response submitted that the documents from the visa applicant's previous spouse visa file are "T documents" as described in s.37 *Administrative Appeals Tribunal Act 1975*. S.37 of the *Administrative Appeals Tribunal Act 1975* (the AAT Act) places a requirement on a decision maker whose decision is the subject of a review by the tribunal to provide the tribunal with the prescribed number of copies of their decision and relevant documents. I have considered that s.37 of the AAT Act does not apply to reviews in the Migration review division, as s.37 falls within Part IV of the AAT Act (see s.24Z of the AAT Act).
38. The submission implies that there was a request for provision of documents made to the tribunal pursuant to s.362A. The tribunal did not receive a direct or implied request pursuant to s.362A for provision of documents and material that was before the tribunal.
39. The tribunal sought a copy of the Department file in relation to the visa applicant's previous partner visa application which was in existence and being processed concurrently at the time of the claimed relationship which is the subject of this review. The tribunal considered some of the documents on that file provided by the visa applicant through his representative in October 2014 to be adverse information. The tribunal discharged its procedural fairness obligations by providing this information to the review applicant and the visa applicant in the hearing, and put the information to the review applicant pursuant to s.359AA. The obligation to disclose information that would be the reason, or part of the reason for affirming the decision under review contained in s.359A, may be discharged orally at hearing, or in writing: *SZPZH v MIAC [2011] FMCA 407*, upheld on appeal *SZPZH v MIAC [2011] FCA 960*.
40. The tribunal is satisfied that the information in the Department file was properly obtained by the tribunal, was relevant to the review and within the scope of the review, and was properly put to the review applicant within the tribunal's procedural fairness obligations under s.359AA.
41. **Allegation of bias**
42. The review applicant and visa applicant made an allegation of bias in the submission and responses received after the hearing. There was no issue raised at the hearing. The audio discloses all discussion was courteous. The submission states the "member claimed" certain issues, whereas the audio records that at all times I stated the evidence "indicated" or "suggested" certain conclusions and invited the parties to comment. The submissions stated the member "accused" the visa applicant of certain things, including misleading the

Department. This is unnecessary language from the parties. The tribunal did not accuse the parties, but discussed all relevant aspects of the review, as I am required to do to discharge my procedural fairness obligations and to properly consider the matter. The audio of the hearing discloses records that I discussed with the parties issues raised by the evidence, and the review applicant and the visa applicant were given as much time as they required to discuss these issues.

43. It must be clearly stated that in the Department decision record it was identified that during the claimed relationship with [Ms C] which commenced in August 2014, the visa applicant had continued with another partner visa application with the Department, and then applied for a review of that decision, and the application for review was continued and not withdrawn until March 2016. These are issues that most properly had to be put to the parties, as they are relevant to the credibility of the parties' evidence, and the mutual commitment of the parties to the relationship, and the genuineness of the relationship which is the subject of this review.
44. The submissions contain a complaint of perceived bias as it 'came across' to the parties that I had formed a preconceived view of the visa applicant and that I had conducted an investigation in a biased manner during the hearing. I am satisfied after listening to the audio and considering all preparatory processes that I have considered all relevant information, maintained an open mind, and allowed the parties the opportunity to be informed of and to comment on or respond to all relevant information, and the hearing was conducted with complete fairness to the review applicant and the visa applicant. Further, I am satisfied that there was no indication or perception at the conclusion of the hearing that I had not conducted the hearing with an open mind.
45. I am satisfied after carefully considering the complaint and the hearing and preparatory processes, that the hearing was conducted in a procedurally fair manner. The tribunal did not prejudge the issues to be determined. I afforded the review applicant and the visa applicant the opportunity to comment or respond to relevant adverse information during the hearing. I am satisfied an observer would not have considered that the hearing was conducted with any apprehension of bias.
46. The parties' submission does not directly request that I recuse myself, and it is not clear that it is a request that I recuse myself from this review. However, I have considered the review in its entirety, and I am satisfied that there is no basis for the allegation of bias, or a perception of bias. The basis of the claim by the parties appears to be that they were not provided with the documents from the visa applicant's previous spouse visa application. As stated above that information was properly and appropriately given orally and put to the review applicant at the hearing, and it was also given orally to the visa applicant. The information was explained in detail, its relevance was explained, and the indication was both the information and its relevance was understood. I am satisfied there is no basis for the allegation of bias, and if this is a request for me to recuse myself, it is declined.

47. Quality of Interpreting at the hearing

48. The review applicant indicated at the hearing that she spoke English, and would utilise the interpreter if she required. I discussed with the review applicant and her representative the importance of her being comfortable in the hearing, and indicating if she required the assistance of the interpreter. I invited the representative to let me know at any time during the hearing if he thought there were any issues of understanding, and confirmed the interpreter was present to assist.
49. The review applicant interrupted the visa applicant's evidence quite often to indicate concerns with the quality of the interpreting. These issues varied. Sometimes [Ms C]

indicated she was not content with [Mr A's] evidence and she stated that [Mr A] had not understood the question. Other times she stated the interpreting was not correct – either in the use of the words, or the omission of part of the question. On each occasion, I made sure the question was repeated, and endeavoured to ensure that [Mr A] understood the question. I cannot be certain that this occurred. As the matter was raised in the hearing, after assessment of the concerns, the decision was made to proceed carefully. [Mr A's] answers appeared to be appropriate in both content and detail.

50. In the submission, the parties outlined specific errors of interpreting; the English word 'embarrassed' when the review applicant states the visa applicant had stated he was confused. At this point the interpreter stated the translation was correct, and the hearing proceeded. The parties claim that [Mr A] said he was *confused with the question*, and not that he was *embarrassed by the issue*. I accept that these errors can be cause for concern in relation to the interpreting. The parties submit the interpreter mixed up [the] phrase '*no longer in a partner relationship*' with *separation*, which led to confusion for the visa applicant. In the post hearing submission, [Ms C] claimed the incorrect [Country 1 language] word had been used for 'separation', and the word interpreted by the interpreter had the meaning 'farewell' rather than 'separation'.
51. I have considered the complaint in the post hearing submissions that the word 'separation' was incorrectly translated in [Country 1 language] to mean 'farewell' rather than separation. The responses do not state how many times this occurred during the hearing. It is not stated how the claimed different translation of separation affected the evidence of [Mr A], or the reliability of his evidence or the accuracy of the interpreting. I have considered that the use of the word 'separated' or 'separation', was a word used by the visa applicant in nominating the difference between divorce and separation, to explain why his relationship had not ceased with his first wife, whilst claiming to be in a relationship with [Ms C]. The use of the word 'separated' and 'separation', do not appear to have been used out of context, and through the interpreting the use of the words appear to be appropriate, and in context, and not to have meant or inferred 'farewell'. I do not consider that any procedural unfairness or inadequate interpreting has arisen through the use of misinterpreting of this word.
52. I have considered that in most circumstances [Ms C] and [Mr A] provided consistent and detailed evidence. I have considered that [Ms C] alerted the tribunal to concerns she had with the interpreting during the hearing. Sometimes [Ms C] stated that [Mr A] did not understand the question, which is not the same thing as unreliable interpreting. Sometimes [Ms C] indicated the wrong interpretation had been used by the interpreter.
53. To attempt to ensure the interpretation was accurate, I would repeat the question, or reformat the question. On occasions I checked with the interpreter that the correct word had been used. I asked [Mr A] if he understood the question. When [Mr A's] answers were not appropriate to the question (which is a situation that can happen in any question – answer scenario, even without interpreter assistance), I repeated the question, or changed the question, or explained the issue through the interpreter to ensure as best I could that [Mr A] understood the question. I accept there can be difficulties giving evidence via telephone with the assistance of an interpreter. I accept that in interpreting from one language to another sentences need to be reformatted to make sense, and some words do not translate easily. I am satisfied that I exercised due diligence to ensure that both [Mr A] and I understood each other.
54. I have carefully assessed [Mr A's] evidence, and am satisfied that it appears to be detailed, appropriate to the questions, and consistent with other evidence – all of which indicates that [Mr A] and the interpreter communicated reliably. I am satisfied that generally the evidence of [Mr A] is reliable. However, although [Mr A] gave detailed evidence at the hearing which

appeared to be consistent and generally [Ms C] was content, I am cognisant that issues in relation to the interpreter were raised at the hearing.

55. One of the complaints in the post hearing responses which alleged poor quality interpreting, was that when I asked the question to [Mr A] '*when your wife travelled to visit [Country 1], where did she stay?*', the last four words were not interpreted. However, the issue was raised in the hearing, the question was reformatted, and [Mr A] did give evidence that [Ms C] stayed with his family when she visited, so this difficulty was overcome.
56. Another complaint in the post hearing responses was that I used the phrase '*no longer in a partner relationship*' (with his first wife) and I did not explain or define this term. I do not consider there is any disadvantage served to the review applicant or visa applicant by my not defining this phrase. The visa applicant gave evidence about the factual situation with his first wife. I understand and accept [Mr A's] evidence to be that his first wife left their marital home and their marriage in February 2014 and resumed living with her previous partner who had been released from [Facility 1]. In their responses, the parties complain that [Mr A] was confused about the differences in the three terms, 'no longer in a partner relationship', 'separated', and 'divorced'. I do not consider these terms need to be explained or defined in the hearing. It was [Mr A] who emphasised the difference between being separated and being divorced. [Mr A's] evidence was that his first partner relationship had not ceased in 2014 or in early 2015 because the relationship was only in separation and had not been finalised by divorce.
57. The responses also complain that when [Mr A] was giving evidence about the provision of the documents in support of his ongoing partner visa application with his first wife in October 2014 to the Department through his representative, that [Mr A] answered '*I am confused by this question*', rather than the translated response that '*I am embarrassed about this*'. This answer was challenged by [Ms C] in the hearing. The question and answer was repeated, and the interpreter confirmed his interpretation of the answer was correct. I have considered this issue previously in the decision record, and I do not place any weight or reliance on [Mr A's] answer. I am satisfied that his subsequent answers in relation to question can appropriately be considered by the tribunal.
58. I have considered that during the hearing the parties provided generally consistent evidence that was detailed in content about their relationship. Despite the parties complaint about the 'interpreting. After the hearing the parties provided explanations in their comments and responses, and further information, that satisfied my concerns or queries in relation to any inconsistencies or matters I had not covered in the hearing, in relation to the evidence of the circumstances of their relationship. For these reasons, I do not consider the identified issues with the interpreting at the hearing consequently result in a further hearing being required in this review.
59. However, in the post hearing responses, the parties provided some information in relation to the visa applicant's relationship with his first wife during 2014, that was different to his evidence in the hearing. As this may have been affected by the reliability of the interpreting, I decided to allow the review applicant the opportunity to clarify [Mr A's] evidence so there was no misunderstanding. This would ensure my assessment of [Mr A's] evidence is not affected by misunderstanding or miscommunication of his oral evidence, and ensures procedural fairness to the parties. I invited the review applicant to provide any further information or clarification of [Mr A's] evidence in relation to the exact nature of his relationship with and contact with his previous wife during 2014 and 2015. In the letter I stated that I understood his evidence, and this was repeated to and confirmed by his representative in the hearing to be correct, that [Mr A's] first wife left their marital home and their marriage in February 2014 and she resumed living with her previous partner who was released from [Facility 1] at that time. I also stated that I understood [Mr A] remained living in

the marital home, that he was sad and that his relationship with his first wife was described as a separation. I indicated that the invitation to provide further evidence would mean that my understanding of his evidence would not be affected by any inaccuracy in the interpreting of his evidence. I did not receive any further statement from [Mr A] in relation to his evidence about his relationship with his first wife in 2014 and 2015. The opportunity to provide a further statement and overcome any of the claimed inaccuracies in the interpreting was not taken by the review applicant. The tribunal considers it has offered extensive opportunities to the review applicant, and that it has discharged its obligations for procedural fairness in relation to any concerns about the interpreting at the hearing. The Tribunal is satisfied that it can fairly and appropriately consider [Mr A's] oral evidence (subject to the above qualifications) together with the information provided in the post hearing submissions.

Are the parties validly married?

60. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. Based on the marriage certificate, I am satisfied that the parties were married [in] February 2016 in [a suburb]. I have considered [Mr A's] divorce certificate, which took effect in September 2015. I accept both parties are divorced at the time of the marriage. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

61. Financial Aspects of the Relationship

62. I accept the evidence of [Ms C] that she has purchased her own unit which is subject to a mortgage, and both the property and the mortgage are in her name. I accept her evidence that she has four bank accounts, and [Mr A] has one Australian bank account, and they are all with the same financial institution, and [Mr A] has bank accounts in [Country 1]. The tribunal was only provided with copies of the joint bank account statement.
63. The evidence of the parties is that they used the joint account for direct debit to pay the mortgage, for their household bills and expenses, and for day to day use. [Ms C's] salary is recorded as being deposited in the joint account. [Mr A] stated he contributed to the joint account when he lived in Australia by cash deposits. The joint bank statements record cash deposits in the account. I accept that both parties were employed during the time that [Mr A] resided in Australia.
64. [Mr A] and [Ms C] both stated [Mr A] earns about [amount] [Country 1 currency] from his employment, and about [amount] [Country 1 currency] from rental income per month. The parties gave slightly different estimates of the exchange rate, but I accept the total monthly income is between AUD[amount] and [amount]. Both parties stated [Mr A] continues to contribute to the mortgage payments by transfers to the joint account. [Mr A] stated he was limited in the amount he could transfer under [Country 1] law, and he made on payment of between AUD[amount] and [amount] per year, under the reference 'relative assist'. [Ms C] stated [Mr A] pays most of his monthly income to her, under the reference 'family support'. I indicated in the hearing that I accepted the reference 'relative assist' was synonymous with the reference 'family support' after translation. I discussed that neither of the parties' evidence is consistent with the bank statements they provided which record that the payments made under the reference 'family support' include [December] 2016 [amount], [December] 2016 [amount], [January] 2017 [amount] and [January] 2017 [amount].
65. At the conclusion of the hearing I allowed [Ms C] three weeks to provide information to explain the information in the bank statements in light of their evidence. This was not put pursuant to s.359AA, but was an invitation to explain the financial contributions. I have

considered the responses provided and accept that the [amount] contribution I had thought was made [in] January 2017, was made [in] January 2018, and this was my error as the 2018 bank statement was attached to the 2017 bank statement, and only the day and month are recorded beside each transaction. The applicant submitted that he never exceeded payments of US[amount] per year (between [amount] and [amount] AUD), due to the [Country 1] regulation restrictions. The applicant provided the [Country 1] regulations translated and the correct dates of his money transfers. I accept that the oral evidence is consistent with the documents provided.

66. The parties stated in the future they plan to operate a [business] together but have not defined any detailed plans. Their evidence is that they would continue to reside in [Ms C's] unit.
67. The financial evidence of the relationship is that the parties do not have any joint assets or liabilities as the property and mortgage is in [Ms C's] name. I accept the evidence that the parties operated a joint bank account, out of which the mortgage was paid by direct debit. I accept the evidence in the form of the [Ms C's] super statement, that she has nominated [Mr A] as a 50% beneficiary. At the time [Mr A] lived in Australia, I am asked to accept his contributions to the financial arrangements are identified as cash deposits. I accept this as after [Mr A] returned to [Country 1] he transferred money to the joint account under his name with the reference 'family support'. I accept the evidence is that the parties pooled their financial resources, and shared their day to day household expenses. There is no evidence that either had a legal obligation in respect of the other.
68. On balance the evidence of the financial aspects of the relationship indicate that the parties are in a genuine and continuing relationship.

69. *Nature of the Parties' Household*

70. [Ms C] gave evidence of her commitment to her church. She attended the hearing with six members of the church who came for support, and the pastor who gave evidence as a witness. [Ms C] told the tribunal that she understood it was against the principles of her church to live together in a sexual relationship prior to marriage. She stated that for this reason she could not tell her parents when [Mr A] moved into her home in July 2015. She stated she did not tell them so that they did not worry. (I have considered this further under the social aspects of the relationship.) For the same reason [Ms C] stated she felt uncomfortable with some of the church congregation who knew that [Mr A] lived at her house. [Ms C] stated that they lived in separate bedrooms, and did not have a sexual relationship before they were married. After the hearing, in response to a written request, the review applicant advised her unit had three bedrooms. Both [Ms C] and [Mr A] stated that they did not have children, or responsibilities for any children.
71. The parties gave consistent evidence that [Mr A] was responsible for the garden and keeping it clean and tidy. [Ms C] stated that she did the laundry, and [Mr A] stated that [Ms C] cleaned the bathroom. [Ms C] stated they shared the cleaning, and they did the cleaning separately as required.
72. [Ms C] stated they sometimes cooked together, and if one of them cooked, the other person washed up the dishes. [Mr A] stated [Ms C] did all the cooking. This inconsistent evidence was put to [Ms C] at the end of the hearing pursuant to s.359AA, and the time of three weeks was allowed for [Ms C] to provide her written comments or responses. I clarified with [Ms C] and her representative that this inconsistent information alone, if relied upon, would not be sufficient for the tribunal to affirm the decision. I clarified it could only form part of the reasons for affirming the decision if the information was relied upon by the tribunal. In the responses the review applicant stated the visa applicant was confused by the long questions

and which were translated incompletely and disruptively. In the response the representative submits [Mr A] gave answers *that the interpreter wanted him to talk* about what each of them did mostly at home, rather than about their shared responsibilities. I accept that the interpreter stated [Mr A] cooked 'instant' noodles rather than a specialised dish of noodles; however I find the post hearing responses from the parties add to the evidence of [Mr A] rather than change it except for qualifying that he cooked a gourmet dish of noodles and not 'instant' noodles. I have noted the interpreter has translated that [Mr A] has told the tribunal what he did for his wife's birthday [in] 2014 (went to [a location]) and [in] 2015 (the noodles) so the submission is incorrect when it alleges the interpreter did not mention on her birthday.

73. The parties stated in the responses that [Mr A] is [skilled in an occupation], and provided four photographs depicting [Mr A] [with] [Ms C] present on what appears to be two separate occasions. I have considered the evidence that when the parties both lived at [Ms C's] unit, they shared the household [responsibilities].
74. I am satisfied the interpreting has not affected the reliability of the evidence in relation to the nature of the parties' household. I have considered the oral and written and photographic evidence of the parties' household indicates they shared domestic tasks when [Mr A] lived in Australia.
75. I have considered the written evidence provided by friends and relatives of the parties. I note that there are differences in the written evidence in relation to the living arrangements of the parties. [Mr D] declares in the statutory declaration dated 4 March 2016 that the parties had a marriage ceremony [in] February 2016 and since then they have lived at the address in [another suburb] together. [Ms E] states in a letter that she lived with [Ms C] until February 2016, at a time that [Ms C] was living with her fiancé and one other roommate. [Ms F] wrote in a letter dated 10 March 2016 that she had lived with [Ms C] for over 12 months from January 2015, and that her boyfriend, [Mr A] had also lived with [Ms C] from the middle of 2015. [A named person] in a letter dated 15 March 2016 and [a second named person] in a letter dated 18 March 2016 stated they are aware [Ms C] and [Mr A] had lived together from July 2015. [A third named person] and [a fourth named person] provided a joint letter dated 9 March 2016 in which they stated they attended church with both [Ms C] and [Mr A], and had recently become aware that the parties were in a relationship and they had attended the marriage certificate signing [in] February 2016. An assessment of this evidence indicates that at the time that the parties state [Mr A] was residing with [Ms C] (from July 2015), two people, [Ms E] and [Ms F] say they resided at [Ms C's] home. As the evidence before me is that [Ms C's] home is a three-bedroom home this is not consistent with the evidence that [Ms C] and [Mr A] lived together but occupied separate bedrooms from July 2015. The applicant has provided a statement from [Mr D] that the parties resided together after their marriage, and the joint statement dated March 2016 from friends from the same church who stated they recently became aware the parties were in a relationship. This is not consistent with the evidence that [Ms C] and [Mr A] resided together from July 2015. There is some evidence in the form of written statements that the parties had resided together from July 2015. I have also considered that some of the information provided by [Mr A] to the Department, and some of the evidence and post hearing responses provided by [Ms C] and [Mr A] is in my view unreliable and not credible evidence.
76. I have assessed all the evidence before me, including the oral evidence, the written evidence and the photographic evidence provided. I find the evidence is unreliable and inconsistent. I am not satisfied that the parties live together as they claimed. I have considered the evidence of the living arrangements of the persons and the sharing of the responsibility for housework and I am not satisfied that the evidence indicates the parties were in a genuine and continuing relationship. I am not satisfied that the parties were in a committed relationship or that they lived together prior to the marriage or prior to [Mr A] returning to [Country 1].

77. *Social Aspects of the Relationship*

78. At the time the parties moved in together, [Ms C] stated she did not tell her parents, partly because living together without being married was against the teachings of her church and against her beliefs, and accordingly it would worry her parents. [Ms C] stated she had previously told her parents she had a boyfriend and they were happy for her. [Mr A] stated that they contacted [Ms C's] parents in July 2015, and he sought their permission for the living together arrangement. [Ms C] stated she told her parents of the relationship at the end of the year, when the parties planned their wedding celebrations in [Country 1] [in] January 2016. I put this inconsistent information to Ms [Ms C] at the conclusion of the hearing pursuant to s.359AA, and granted the three week period for her to provide her comments and responses.
79. In the written responses the representative submits that [Mr A] did not call [Ms C's] parents just prior to moving in together, to obtain permission for their arrangements, but that he called the parents at that time to introduce himself, to request to be a friend to their daughter with a view to marriage. I accept that [Mr A's] evidence is open to the interpretation that just prior to moving in with [Ms C], he called her parents, but did not disclose that they planned to live together. I have some doubts about this explanation as it does not explain why [Mr A] chose to call [Ms C's] parents and introduce himself, if it was not before a significant change in their relationship. However, as the time frame is vague, being before they moved in together, I accept the explanation has some validity. I accept there is an interpretation of the evidence that allows the parties did not provide inconsistent evidence about when they advised [Ms C's] parents of the nature of their relationship.
80. The visa applicant had provided statutory declarations by persons who knew the parties in support of the application. The tribunal received two statutory declarations and nine letters of support. These documents set out how they knew the parties, where they met, how they formed the opinion of the relationship. The tribunal was also provided with photographs of the parties together, with other people, and doing activities together and with other people.
81. At the hearing the pastor gave evidence. He stated he had known the parties for a long time; [Ms C] since the mid 2000's and [Mr A] since 2011. He stated he did not marry them, but he attended their civil wedding. He stated he did not counsel the parties in relation to the appropriateness or temptations in living together, because he was too close to them in age to undertake that role. He stated he imagined there would have been rumours at the church about the situation. The pastor stated in his opinion the relationship is genuine. He knew when the relationship commenced as both parties are at church every Sunday for service and bible study. The pastor stated they arrived in the same car. The pastor stated he had been out for meals with the parties, and shared a tent with them on the church camp. The pastor stated he knew the parties kept in touch after [Mr A] returned to [Country 1], and that [Ms C] had travelled back to see him.
82. I have carefully considered the evidence of the pastor. I discussed with the pastor my concerns about [Mr A's] previous visa application. The pastor indicated he had no knowledge of [Mr A's] previous visa application. I have considered that the evidence of the pastor is consistent with [Ms C] and [Mr A] knowing each other and coming to church together. The evidence does not necessarily mean that the parties were in a committed spousal relationship, or living together.
83. The parties stated they planned a wedding celebration in [Country 1] [in] January 2016 but it was cancelled because [Ms C's] father was ill. The parties were married in a civil ceremony in [Australia] [in] February 2016. After the hearing in response to a question from the tribunal, the review applicant advised that they were married by a civil celebrant, in a civil marriage ceremony which did not occur in a church, but which was attended by [Pastor B],

and by [another pastor] who conducted a religious ceremony at the same time. The tribunal accepts the written advice of the senior pastor of the [evangelical] church that the parties could not marry in a church wedding, as they are divorced persons.

84. The parties have met in [Country 1] on five occasions since [Mr A] left Australia. [Ms C] stated that she has not been able to obtain leave from work for longer than two weeks, so her visits are all ten to fourteen days in duration. [Ms C] stated for this reason the parties never arranged a celebration of their wedding or a party to introduce each other as their spouse to all their relatives. [Mr A] and [Ms C] both stated they stayed together at [Mr A's] parents' home when [Ms C] visits. This was an issue raised by the parties in relation to the interpreting at the hearing, but I accept that both [Ms C] and [Mr A] gave evidence that [Ms C] stayed at [Mr A's] family home when she visited [Country 1]. [Mr A] stated that they introduced themselves to their relatives. I accept that [Ms C] has travelled five times to [Country 1] since their marriage.
85. The parties gave consistent evidence that they had breakfast and went to the market and did the shopping on Saturdays. The parties stated that they went to church for the service and bible study on Sundays. I accept the parties were working during the week. I have considered the evidence of the parties that they planned small trips on the long weekends and planned social activities together. I have to assess the reliability of the oral evidence of [Ms C] and [Mr A].
86. The evidence of the social aspects of the relationship as presented by witnesses indicates the parties represent themselves as being in a married relationship, and other people are of the view that the relationship is genuine, and I give this some weight. However some of the written evidence provided by the applicant in support of the application is conflicting. [Ms C] and [Mr A] did not give any evidence of sharing their home with other persons whilst [Mr A] resided in Australia. The parties provided two statements from persons who claimed to also live in the home at the time that [Mr A] claimed to reside with [Ms C]. [Ms C] stated in post hearing responses that her house has three bedrooms. The evidence before me is that [Ms C] and [Mr A] occupied separate bedrooms, for the period July 2015 onwards until their marriage, at the same time that [Ms F] and [Ms E] also claimed to be residing in the three-bedroom home. The parties provided a joint statement from witnesses who said they knew both [Ms C] and [Mr A] from church, and the statement dated March 2016 declared the witnesses had only recently become aware of the parties relationship. This is not consistent with evidence that the parties had been in a committed relationship and residing together since July 2015. The parties provided a statement from another witness who declared the parties had lived together since their marriage in February 2016. This is not consistent with evidence that the parties had resided together since July 2015. The parties provided statements from witnesses who did not refer to the parties residing together prior to their marriage. The parties provided statements from other witnesses who referred to the parties residing together from July 2015. I find that the evidence of friends and acquaintances in relation to the opinion of the nature of the relationship of [Ms C] and [Mr A] is unreliable because of the inconsistency of the information contained in the evidence.
87. I have considered the evidence that the review applicant and visa applicant did not disclose their committed relationship when they claim are moved in together to [Ms C's] parents, and the fact they moved in together against the teachings of their church, and find this evidence lacks plausibility. I have considered the evidence of the parties in relation to the commitment to their religion and to their church. I also find that the evidence of the review applicant and visa applicant provided in relation to other aspects of the review is unreliable and not credible, and this is relevant to my assessment of their oral evidence of their relationship.

88. *The Nature of the Persons' Commitment to each Other*

89. The parties both stated they met in June 2014, became girlfriend/boyfriend [in] August 2014 and moved in together in July 2015 and married in February 2016. The consistent evidence before me is that the parties had been married for less than two months at the time of application, and been married for three years at the time of decision. The parties claim they have lived together for eight months prior to [Mr A] leaving Australia, and approximately less than two months in total since that time when [Ms C] has visited [Country 1].
90. The issues of whether the parties resided together from July 2015 til the marriage are issues that also engage the findings of the duration of the relationship and length of time the parties have lived together.
91. In the post hearing of submissions signed 2 March 2019, the review applicant submitted that [Mr A] had not thought his partner relationship with his first wife had ended on 2 February 2014 but was still ongoing until the final divorce. I have some doubts as to the credibility of these submissions. The review applicant submits that [Mr A] continued spousal responsibilities which included paying household expenses and bills, maintaining a shared bank account, taking his first wife to the doctors and caring for her through sickness and depression, going with her to centre link, the transport accident commission and other third-party organisations and companies *in the capacity of her husband*. The review applicant also submits that [Mr A] did not have control over their finances during 2014, but these were controlled by his first wife. [Mr A] gave evidence about how sad he was when his wife left of their marital home to reside with her first husband and care for him. His evidence in the hearing was that his wife left in February 2014 and they were separated from that time.
92. I have considered the evidence that [Mr A's] representative provided the Department documents in support of the application for the partner visa with his first wife in October 2014. I have considered whether the provision of these documents indicates the relationship was continuing or [Mr A] wished to indicate to the Department that the relationship was continuing. I have considered the evidence that [Mr A] lodged an application for review to the Administrative Appeals Tribunal in relation to the Department's decision to refuse his application for a partner visa with his first wife in March 2015. I have considered the post hearing submissions that [Mr A] was actively involved in ongoing shared financial arrangements with his first wife, actively involved in her health care, and presented with his first wife to many authorities and organisations as a married couple in 2014 and 2015. I have considered that these responses provide new evidence in relation to [Mr A's] situation and relationship with his first wife. This is information that has not previously been provided, and is not consistent with the evidence provided to the Department, to the tribunal or at the hearing. The evidence before me indicates that [Mr A] and [Ms C] change the information provided to the Tribunal to support what they consider will provide a satisfactory migratory outcome in this review. I find that [Mr A's] evidence and the quality of the information he provides continues to be unreliable and not credible.
93. The parties claim that they provide support and companionship to each other. They have provided evidence of regular communication in the form of call records, telephone accounts, photographs of time together, and their oral evidence and the written and oral evidence of witnesses. I have considered this evidence, and accept that [Ms C] and [Mr A] know each other. I accept that the evidence of ongoing communication indicates the parties provide a degree of companionship and support.
94. The parties gave evidence that they see the relationship as long term, and they plan to have children and operate a take away business together. I have considered that this evidence indicates that the parties see the relationship as long term, is I accept the oral evidence of the parties as reliable and credible.

95. I have considered the evidence that both parties stated they decided to go move in together in July 2015, although this was against the doctrines of their religion. I have considered the evidence that both parties claimed they did not commence a sexual relationship despite their decision to live together. I have considered the evidence of both parties that they did not inform [Ms C's] parents that they resided together. I have considered the evidence of [Ms C] that there was some social stigma attached to residing with a man to whom she was not married that she experienced from other members of the church. I am not satisfied that the review applicant and visa applicant have given credible and truthful evidence about residing together prior to the marriage, or the claimed time when their relationship commenced. I have considered and assessed the evidence of the pastor at the hearing and the written evidence of witnesses provided by the applicant. I am not satisfied that the parties been in a relationship since August 2014, and I am not satisfied that the parties have lived together since July 2015. I am not satisfied that the parties have been in a committed relationship prior to [Mr A] returning to [Country 1] in 2016. I am not satisfied that the parties saw the relationship as a long term relationship prior to [Mr A] returning to [Country 1] in 2016.

96. Findings and Conclusions

97. I have carefully assessed the evidence before me. There are unusual circumstances in this review, most particularly that the visa applicant provided documents to the Department in support of a previous partner visa application in October 2014, and lodged a review of the Department's decision to refuse that application for a partner visa application in March 2015, and did not withdraw that application for review for a period of 12 months. The visa applicant and review applicant claim their relationship commenced in August 2014. The visa applicant in his oral evidence stated that his first wife left the home, and the relationship broke down in February 2014. I have received evidence and submissions from the visa applicant and review applicant that the relationship between the visa applicant and his first wife did not cease in February 2014 as initially claimed. I have received submissions that the visa applicant continue to provide care and support, to be involved financially, and to present himself as the husband of his first wife to relevant authorities and organisations in 2014 and for an unspecified period in 2015.
98. I find the evidence and submissions before me indicate that the visa applicant is willing to manipulate visa applications to achieve a migratory outcome. I find the visa applicant provided documents in support of the application for the partner visa with his first wife in October 2014 when that relationship had ceased. I find the visa applicant lodged an application for review of the refusal of the application for the partner visa with his first wife, at a time when the relationship with his first wife had been ceased for over 12 months.
99. I find that when the tribunal put the adverse information to the review applicant, that he had provided documents to the Department in October 2014 that indicated the visa applicant was suggesting the relationship was continuing at that time, both the review applicant and the visa applicant then provided submissions to the tribunal that suggested the visa applicant had been an ongoing marital relationship with his first wife at that time. I do not accept these submissions as credible or plausible.
100. I find the review applicant and visa applicant have provided evidence to the tribunal which is not reliable or credible. The review applicant submitted that the visa applicant's previous representative had discarded all his documents, and the tribunal ascertained from the representative that in fact those documents had been archived and were retrievable. The review applicant has not submitted an application to provide evidence that the visa applicant did not provide documents to his representative in support of his application for the visa with his first wife in October 2014.

101. I find the review applicant and the visa applicant are both aware that the visa applicant had provided those documents to his representative in October 2014 in support of an application for a partner visa in which the relationship had broken down. I do not accept the explanation that the visa applicant believed that because no divorce had been granted the relationship continued.
102. I have considered the lack of credibility and reliability in the evidence before me, and analysed overall the evidence in relation to the circumstances of the relationship. I do not accept that the parties resided together in 2015 as claimed
103. I do not find the evidence of the parties to be reliable, particularly when there are other factors that question the plausibility of the evidence before me. I find that it is implausible for two people who are devoutly religious, to go against the teachings of the church in order to reside together but not to have any intimate relations. The choice to live together seem to have no possible gain, particularly as both the review applicant and the visa applicant had satisfactory places to live so the decision was not one made of necessity. I find the written evidence of witnesses in support of when and if the applicants resided together to be inconsistent and unreliable. I find that the evidence in relation to this review has been clouded by my finding that the visa applicant will manipulate evidence to achieve a migratory outcome.
104. I am cognisant that the evidence before me of the circumstances of the relationship needs to be balanced in this review. I have carefully assessed all the evidence before me. I am not satisfied that at the time of application the review applicant [Ms C] and the visa applicant [Mr A] were in a genuine and continuing relationship, or that they had a mutual commitment to a shared life as husband and wife to the exclusion of all others. I am not satisfied that the parties meet the requirements of s.5F(2)(b) and (c).
105. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made.
106. For these reasons I am not satisfied that the visa applicant meets the requirements of cl.309.211(2).
107. As I am satisfied that the parties are married, the visa applicant does not meet the alternative criterion in cl.309.211(3).
108. Therefore the visa applicant does not meet cl.309.211.
109. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.
- 110.

DECISION

111. The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa.

Margie Bourke
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).